

Wage and Hour Division, Labor

§ 570.121

§ 570.119 Fourteen-year minimum.

With respect to employment in occupations other than manufacturing and mining and in accordance with the provisions of FLSA section 13(c)(7), the Secretary is authorized to issue regulations or orders lowering the age minimum to 14 years where he or she finds that such employment is confined to periods that will not interfere with the minors' schooling and to conditions that will not interfere with their health and well-being. Pursuant to this authority, the Secretary has detailed in § 570.34 all those occupations in which 14- and 15-year-olds may be employed when the work is performed outside school hours and is confined to other specified limits. The Secretary, in order to provide clarity and assist employers in attaining compliance, has listed in § 570.33 certain prohibited occupations that, over the years, have been the frequent subject of questions or violations. The list of occupations in § 570.33 is not exhaustive. The Secretary has also set forth, in § 570.35, additional conditions that limit the periods during which 14- and 15-year-olds may be employed. The employment of minors under 14 years of age is not permissible under any circumstances if the employment is covered by the child labor provisions and not specifically exempt.

[75 FR 28458, May 20, 2010]

§ 570.120 Eighteen-year minimum.

To protect young workers from hazardous employment, the FLSA provides for a minimum age of 18 years in occupations found and declared by the Secretary to be particularly hazardous or detrimental to the health or well-being for minors 16 and 17 years of age. Hazardous occupations orders are the means through which occupations are declared to be particularly hazardous for minors. Since 1995, the promulgation and amendment of the hazardous occupations orders have been effectuated under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* The effect of these orders is to raise the minimum age for employment to 18 years in the occupations covered. Seventeen orders, published in subpart E

of this part, have thus far been issued under the FLSA and are now in effect.

[75 FR 28458, May 20, 2010]

§ 570.121 Age certificates.

(a) To protect an employer from unwitting violation of the minimum age standards, it is provided in section 3(1)(2) of the Act that "oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child labor age." An age certificate is a statement of a minor's age issued under regulations of the Secretary (Child Labor Regulation No. 1),³¹ based on the best available documentary evidence of age, and carrying the signatures of the minor and the issuing officer. Its purpose is to furnish an employer with reliable proof of the age of a minor employee in order that he may, as specifically provided by the act, protect himself against unintentional violation of the child labor provisions. Pursuant to the regulations of the Secretary, State employment or age certificates are accepted as proof of age in 45 States, the District of Columbia, and Puerto Rico, and Federal certificates of age in Idaho, Mississippi, South Carolina and Texas. If there is a possibility that the minor whom he intends to employ is below the applicable age minimum for the occupation in which he is to be employed, the employer should obtain an age certificate for him.

(b) It should be noted that the age certificate furnishes protection to the employer as provided by the act only if it shows the minor to be above the minimum age applicable thereunder to the occupation in which he is employed. Thus, a State certificate which shows a minor's age to be above the minimum required by State law for the occupation in which he is employed does not protect his employer for purposes of the Fair Labor Standards Act

³¹ Subpart A of this part.

§ 570.122

unless the age shown on such certificate is also above the minimum provided under that act for such occupation.

EXEMPTIONS

§ 570.122 General.

(a) Specific exemptions from the child labor requirements of the Act are provided for:

(1) Employment of children in agriculture outside of school hours for the school district where they live while so employed;

(2) Employment of employees engaged in the delivery of newspapers to the consumer;

(3) Employment of children as actors or performers in motion pictures or in theatrical, radio, or television productions;

(4) Employment by a parent or a person standing in a parent's place of his own child or a child in his custody under the age of sixteen years in any occupation other than manufacturing, mining, or an occupation found by the Secretary to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being.

(5) Employment of homeworkers engaged in the making of evergreen wreaths, including the harvesting of the evergreens or other forest products used in making such wreaths.

(6) Employment of 16- and 17-year-olds to load, but not operate or unload, certain scrap paper balers and paper box compactors under specified conditions.

(7) Employment of 17-year-olds to perform limited driving of cars and trucks during daylight hours under specified conditions.

(8) Employment of youths between the ages of 14 and 18 years who, by statute or judicial order, are excused from compulsory school attendance beyond the eighth grade, under specified conditions, in places of business that use power-driven machinery to process wood products.

(b) When interpreting these provisions, the Secretary will be guided by the principle that such exemptions should be narrowly construed and their

29 CFR Ch. V (7-1-14 Edition)

application limited to those employees who are plainly and unmistakably within their terms. Thus, the fact that a child's occupation involves the performance of work which is considered exempt from the child labor provisions will not relieve his employer from the requirements of section 12(c) or the producer, manufacturer, or dealer from the requirements of section 12(a) if, during the course of his employment, the child spends any part of his time doing work which is covered but not so exempt.

[75 FR 28459, May 20, 2010]

§ 570.123 Agriculture.

(a) Section 13(c) of the Act provides an exemption from the child labor provisions for "any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed." This is the only exemption from the child labor provisions relating to agriculture or the products of agriculture. The various agricultural exemptions provided by sections 7(b)(3), 7(c), 13(a)(6), 13(a)(10) and 13(b)(5) from all or part of the minimum wage and overtime pay requirements are not applicable to the child labor provisions. This exemption, it will be noted, is limited to periods outside of school hours in contrast to the complete exemption for employment in "agriculture" under the wage and hours provisions. Under the original act, the exemption became operative whenever the applicable State law did not require the minor to attend school. The legislative history clearly indicates that in amending this provision, Congress sought to establish a clearer and simpler test for permissive employment which could be applied without the necessity of exploring State legal requirements regarding school attendance in the particular State. It recognized that the original provision fell short of achieving the objective of permitting agricultural work only so long as it did not infringe upon the opportunity of children for education. By recasting the exemption on an "outside of school hours" basis, Congress intended to provide a test which could be more effectively applied toward carrying out this purpose.